

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-202-C - ORDER NO. 2003-741
DECEMBER 22, 2003

IN RE: Delta Phones, Inc.,)	
)	ORDER DISMISSING
Complainant,)	COMPLAINT WITH ✓ <i>DP</i>
)	PREJUDICE
vs.)	
)	
BellSouth Telecommunications, Inc.,)	
)	
Respondent.)	
_____)	

This matter comes before the Public Service Commission of South Carolina ("the Commission") upon BellSouth Telecommunications, Inc.'s ("BellSouth's") Motion for Order Dismissing Complaint with Prejudice. For the reasons set forth below, the Commission finds that BellSouth's Motion should be granted.

On October 31, 2003, the Commission entered its Order No. 2003-654 captioned "Order Granting Motion for Bonds and/or Letters of Credit" ("Order") in this docket. The Order required Delta Phones, Inc. ("Delta Phones") to post appropriate bonds and/or letters of credit within 14 days of receiving the Order, *see* Order at pp. 6-7, ¶¶2-3, and it required Delta Phones to "immediately notify the Commission of the posting of bonds or letters of credit to satisfy the requirements of this Orders." *Id.* at p. 7, ¶4. The Order further provided that if Delta Phones did not comply with these requirements, "Delta

Phone's Complaint shall be automatically dismissed with prejudice" *Id.* at pp. 6-7, ¶¶2-3.

On December 2, 2003, Delta Phone, through its local counsel, filed a letter requesting to withdraw its Complaint in the instant docket. The Commission acknowledges that Delta Phones made no filing with regard to bonds or letters of credit in compliance with the Order of the Commission.

On December 2, 2003, BellSouth filed a Notice in this docket and served a copy of that notice upon counsel for Delta Phones. BellSouth's notice states that Delta Phones has not posted bonds or letters of credit in satisfaction of the requirements of the Order and further states that BellSouth "will disconnect service to Delta Phones, Inc. in South Carolina no sooner than 5:00 p.m. on December 3, 2003." Delta Phones has not challenged or opposed BellSouth's Notice. Moreover, Delta Phones has not notified the Commission that it has posted bonds or letters of credit to satisfy the requirements of the Order.

Also on December 2, 2003, BellSouth filed an "Objection to Letter Requesting Withdrawal of Complaint and Motion for Order Dismissing Complaint with Prejudice" ("Objection/Motion"). Along with its Objection/Motion, BellSouth filed a proposed order, and BellSouth served both its Objection/Motion and proposed order on all parties of record. By its Objection/Motion, BellSouth objects to Delta Phones simply withdrawing its Complaint in the instant docket. BellSouth asserts that if Delta Phones is allowed to withdraw the Complaint that Delta Phones may attempt to re-file its Complaint in another proceeding. BellSouth notes that the Order issued by the

Commission on October 31, 2003, clearly does not allow for such action by Delta Phones. In the Order, the Commission expressed concerns over Delta Phones activity in other jurisdictions and of Delta Phones' ability to meet its financial obligations. Due to these concerns, the Commission ordered Delta Phones to post bonds and/or letters of credit. Further, the Commission ordered that "[i]f Delta Phones does not post the bond or letter of credit within fourteen days, Delta Phones' Complaint shall be automatically dismissed with prejudice and BellSouth shall be permitted to disconnect immediately all service to Delta Phones in South Carolina." Order at p.6, ¶2. No response to BellSouth's Objection/Motion was filed by Delta Phones.

Based upon the correspondence and pleadings before it, the Commission finds that Delta Phones has failed to comply with the Order of the Commission. As Delta Phones has not complied with the Order of the Commission, the Commission finds that Delta Phones Complaint should be dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. BellSouth's Motion is granted.
2. Delta Phone's Complaint in this docket is dismissed with prejudice.

3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:



Bruce F. Duke, Deputy Executive Director

(SEAL)